

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ANTHONY L. BAGLEY,

Petitioner,

v.

ISIDRO BACA, et al.,

Respondents.

Case No. 3:13-cv-00138-MMD-WGC

ORDER

Petitioner Anthony L. Bagley has submitted the required filing fee and his petition shall now be filed.

Pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the Court has made a preliminary review of the proposed petition. This is petitioner's second petition. His claims relating to the *Kazalyn* jury instruction were not presented in the prior petition while his claim of ineffective assistance of appellate counsel was previously presented *Cf. Bagley v. McDaniel*, United States District Court case number 3:05-cv-097-ECR-RAM, Amended Petition (dkt no. 30), filed October 6, 2006. This second and successive petition must, therefore, satisfy the requirements of 28 U.S.C. § 2244.

28 U. S. C. §2244(b)(3)(A) requires petitioner to obtain leave from the Ninth Circuit Court of Appeals to present these claims to this Court in this second petition. Absent leave of the appellate court, the petition must be dismissed. *Id.* Petitioner will be given an opportunity to demonstrate that he has, in fact, obtained permission from the appellate court to bring this second petition as required by statute.

1 IT IS THEREFORE ORDERED that the Clerk shall detach and file the petition
2 (dkt. no. 1-1) and motion for counsel (dkt. no. 1-2). The decision on the motion for
3 counsel shall be temporarily deferred.

4 IT IS FURTHER ORDERED that petitioner will have thirty (30) days from entry of
5 this order to file with the Court proof that he has complied with the requirements of 28
6 U.S.C. § 2244(b) by having previously sought and obtained leave to file this second and
7 successive petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 from the
8 Ninth Circuit Court of Appeals. Failure to provide such proof will result in the dismissal
9 of the petition.

10 DATED THIS 26th day of July 2013.

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14 MIRANDA M. DU
15 UNITED STATES DISTRICT JUDGE
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